# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 3425 of 1998

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VAKIL RAJNIKANT JIVANJI DESAI @ RAJU VAKIL - Petitioner(s)**

**Versus**

**COLLECTOR & 3 - Respondent(s)**

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**Appearance :**

MR ARUN H MEHTA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1, 4,
MR HARIN P RAVAL for Respondent(s) : 1,
None for Respondent(s) : 2,
MR SUNIL C PATEL for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 29/11/2005**

**ORAL JUDGMENT**

In the present petition, the petitioner has challenged the the order dated 12th March, 1998 passed by the Collector, Valsad. By the impugned order, the

Collector, Valsad was pleased to remove the petitioner permanently from the position of Councillor of the Valsad Nagarpalika and was further pleased to declare that the said seat has fallen vacant with effect from 12.3.98.

2. Learned advocate for the petitioner has submitted that in so far as the question of removal of the petitioner as a councillor is concerned, the Collector could not have provided for permanent removal and that the removal envisaged under section 38 of the Gujarat Municipalities Act, 1963 would enure only till the remaining term of the Nagarpalika for which the petitioner was elected as a councillor. He submitted that in this view of the matter, the Collector erred in providing for permanent removal. He further submitted that the term of the Nagarpalika for which the petitioner was elected as a councillor being over, the legality of his removal need not be examined by this Court and the petitioner would be satisfied if the Court strikes down that portion of the order of the Collector by which his removal is to operate permanently.

3. In this regard, besides drawing my attention to the provisions of section 38 of the Gujarat

Municipalities Act, learned counsel also cited a decision of learned single Judge of this Court in the case of H.J.Saiyed v. Stte Electin Commission, 2002 (1) GLR 672. In the said decision, the learned single Judge of this Court, after examining the scheme of the Gujarat Municipalities Act and in particular sections 11, 37 and 38 thereof, came to the conclusion that section 38(1)(a) of the said Act contemplates that disqualification under section 38 is with reference to the term for which the councillor has been elected and during which he has been disqualified. It was further observed that if the councillor is disqualified under section 38(1)(a) read with section 11(1) on the ground of bankruptcy/insolvency or unsoundness of mind, for the remainder of the term of the municipality he cannot be a councillor. It was further observed that the order of disqualification passed under section 38 by itself does not provide for any indefinite embargo on the former councillor's contesting elections after expiry of the term during which he is disqualified.

4. In view of the ratio laid down by the learned single Judge of this Court in the case of H.J.Saiyed (supra), I find force in the contention of the learned advocate for

the petitioner that the Collector could not have provided for permanent removal of the petitioner as a councillor in exercise of powers under section 38(1) of the Gujarat Municipalities Act. The impugned order, therefore, in so far as the same provides for permanent removal of the petitioner is quashed and set aside. The question of legality of the action of removal of the petitioner as councillor till the term for which he was elected being over has become one of academic interest.

5. In the result, the petition is allowed in part. The impugned order dated 12.3.98 passed by the Collector in so far as the same provides for permanent removal of the petitioner is quashed. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)